

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 2166 of 2020

In

Company Appeal (AT) (Insolvency) No. 1056 of 2019

In the matter of:

Rajesh Goyal

....Appellant/Applicant

Vs.

Babita Gupta & Ors.

....Respondents

Present:

**For Appellant/
Applicant:**

**Mr. Abhijeet Sinha, Mr. Saurabh Jain,
Mr. Sandeep Bhuraria, Mr. Aman Anand,
Advocates.**

For Respondents:

**Mr. Praful Jindal, Mr. Rajesh Gupta, Mr. Anubhav
Mehrotra, Mr. Rupesh Kumar, Advocates for
impleader.**

**Mr. Sumesh Dhawan, Ms. Vatsala Kak, Ms.
Geetika Sharma, Advocates for India Bulls**

**Mr. Gaurav Katiyar, IRP, Mr. Rishabh Jain,
Advocate for IRP.**

Mr. Sudeep Kumar Shrotriya, Advocate for R1-3

**Mr. Kumar Anurag Singh, Mr. Zain A. Khan,
Advocates for FC**

**Mr. Amandeep Singh, Advocate for intervenor for
RG Luxury Home Buyers**

**Mr. Rudreshwar Singh, Mr. Gautam Singh,
Advocates for Jan Kaliyan Samiti**

Mr. Manoj Kumar, (Legal Head, IIFL, FC)

Mr. Nishant Piyush, Advocate for FC

Mr. Ram Sharma, Advocate for IIFL.

J U D G M E N T

BANSI LAL BHAT, J.

“To stay experimentation in things economic is a grave responsibility and denial of the right to experiment is fraught with serious consequences to the Nation”. Remarked the Hon’ble Apex Court in **“Swiss Ribbons Private Limited and Anr. vs. Union of India and Ors. (2019) SCC OnLine SC 73”** while dealing with the constitutionality of the Insolvency and Bankruptcy Code, 2016, which was reiterated in **“Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors. – (2019) SCC OnLine SC 1478”**. Taking a cue therefrom this Appellate Tribunal in **“Flat Buyers Association Winter Hills 77, Gurgaon vs. Umang Realtech Private Limited through IRP & Ors. - Company Appeal (AT) (Insolvency) No. 926 of 2019”** decided on 4th February, 2019 embarked upon an experiment to introduce the concept of “Reverse Corporate Insolvency Resolution Process”, which envisaged resolution in real estate sector (Infrastructure Companies) involving allottees/ home buyers as stake holders by looking beyond the dotted line of approval of third party Resolution Plan and devising ways and means of Insolvency Resolution involving all stake holders. The IRP was directed to collate the claims and based on the voting share of allottees find out whether the allottees would agree to a proposal for investment by promoter as an outsider “Financial Creditor” and to allow it to cooperate with IRP to complete the project. This Appellate Tribunal noticed that one of the Promoter – Uppal Housing Private Limited/ Intervenor agreed to play role of a lender (Financial Creditor) while remaining outside the CIRP

process. Such proposal was accepted by the Flat Buyers. JM Financial Credits Solutions Limited also agreed to cooperate subject to a condition imposed in regard to receipt of a percentage of amount paid by the allottees. Applicants Rachna Singh and Ajay Singh who had filed Application under Section 7 of the I&B Code, joined hands with the Flat Buyers Association Winter Hills 77, Gurgaon by becoming its Members. The matter progressed and a number of allottees including the original Applicants got possession of their respective flats. As the contemplated process progressed satisfactorily with cooperation of the stake holders, it was allowed to proceed further.

2. In Company Appeal (AT) (Insolvency) No. 1056 of 2019 decided on 5th of February, 2020, this Appellate Tribunal, while noticing that the concept of Reverse Insolvency Resolution Process conceived and introduced in **Flat Buyers Association Winter Hills 77, Gurgaon** (supra) had shown curtailment of period of resolution without asking for Resolution Plan from the third party and that the Resolution can be taken even during the CIRP if any promoter, as Investor agrees to invest the money for keeping the Company as a going concern and complete the project within the time frame, observed that since part of the infrastructure (Apartment/ Flats) has already been completed, the main beneficiaries being the allottees have already reached settlement with the Promoter and the fact that the Promoter as an outsider-Financial Creditor has agreed to invest the amount from his own sources and not from the account of Corporate Debtor, proceeded to pass a slew of directions invoking Rule 11 of the NCLAT Rules, which are reproduced hereunder: -

“i. ‘Rajesh Goyal’ (Promoter) is directed to cooperate with the Interim Resolution Professional and disburse amount (apart from the amount already disbursed) from outside as Lender (financial creditor) not as Promoter to ensure that the project is completed within the time frame as given by him. The disbursement of amount which has been made by ‘Rajesh Goyal.’ and the amount as will be generated from dues of the Allottees (Financial Creditors) during the Corporate Insolvency Resolution should be deposited in the account of the Company (Corporate Debtor) to keep the Company a going concern. The amount can be utilized only by issuance of cheque signed by the authorized person of the Company (Corporate Debtor) with counter signature by the Interim Resolution Professional. The Bank in which the Corporate Debtor (Company) has account the amount should be deposited only for the purpose of completion of the Project. Banks will allow the cheques for encashment only with the counter signature of the Interim Resolution Professional.

ii. The flats/apartments should be completed in all aspect by 30th June, 2020. All internal fit outs for electricity, water connection should be completed by 30th July, 2020. The allottees are directed to deposit their balance amount and pay 90% without penal interest, if not deposited, by 15th March, 2020. The Allottees in whose favour possession has been offered and clearance has been given by the competent authority are bound to pay the cost for registration and directed to deposit registration cost to get the flats/apartments

registered after paying all the balance amount in terms of the agreement.

iii. Common area such as Swimming Pool, Club House etc. as per the agreement, be also completed by 30th August, 2020. The allottees are allowed to form 'Residents Welfare Association' and get it registered to empower them to claim the common areas.

iv. 'Rajesh Goyal' will return the amount to the allottees, who already sought for, within the time frame i.e. 30% of the principal amount within 90 days and rest 70% of the principal amount within 180 days. The interest be paid to them in the manner as detailed above by 30th August, 2020. The 'Financial Institutions/'Banks' and 'Operational Creditors', if any should be paid simultaneously within the period of 180 days.

v. All these processes should be completed by 30th August, 2020. If it completed, the Corporate Insolvency Resolution Process be closed after intimating it to the Adjudicating Authority (National Company Law Tribunal). The resolution cost including fee of the Interim Resolution Professional will be borne by the Promoter. Only after getting the certificate of completion from the Interim Resolution Professional/Resolution Professional and approval of the Adjudicating Authority (National Company Law Tribunal) unsold flats/ apartments etc. be handed over to the Promoter.

vi. It is made clear that even during the Corporate Insolvency Resolution Process, the Interim Resolution Professional can also sell the unsold flats/apartments, by way of a Tripartite Agreement between the

Purchaser, Interim Resolution Professional/Resolution Professional and Promoter (Rajesh Goyal). The proceeds as may be generated from such sale should be utilized for completion of the project, payment to Financial Institutions/Banks, Operational Creditors and interest as is payable to the allottees whose principal amount is to be refunded. Once the project is completed, the 'Interim Resolution Professional' will move application before the Adjudicating Authority (National Company Law Tribunal) with the report of completion and ask for disposal of application under Section 7 of the 'I&B Code' filed by Ms. Babita Gupta, Mr. Manoj Kumar Gupta and Ms. Sweta Gupta (Allottees – Financial Creditors).

vii. However, if the 'Promoter' fails to comply with the undertaking and fails to invest as financial creditor or do not cooperate with the Interim Resolution Professional/Resolution Professional, the Adjudicating Authority (National Company Law Tribunal) will complete the Insolvency Resolution Process.

The appeal stands disposed of with aforesaid observations and directions.”

3. It is manifestly clear that in the event of Promoter failing to comply with the undertaking and making investment as Financial Creditor or not extending cooperation to the IRP/RP, the resolution process would be completed by the Adjudicating Authority.

4. I.A. No.2166 of 2020 has been filed by Shri Rajesh Goyal seeking extension of timelines laid down in the judgment dated 5th of February, 2020 rendered by this Appellate Tribunal in Company Appeal (AT) (Insolvency)

No.1056 of 2019 (hereinafter referred as 'the Appeal') purportedly in light of the change in circumstances caused by outbreak of COVID-19 pandemic and lockdowns imposed in various parts of the Country after the aforesaid judgment. It is submitted that due to imposition of nationwide lockdown after outbreak of COVID-19 pandemic, the restrictions imposed resulted in unprecedented financial crisis, loss of lives, disruption of construction activity and operations of the corporate sector more particularly the financial as well as the real estate sectors. It is further submitted that the Central Government and various instrumentalities of State, have recognized the hardship and extended timelines for completion of projects. It is submitted that the aforesaid judgment was delivered just before outbreak of COVID-19 pandemic and the timelines laid down in terms of the judgment were required to be extended as non-compliance of the directions on the part of Applicant were not intentional.

5. All stake holders including Indiabulls who was a party to original proceedings in Appeal as a Financial Creditor and the Home buyers were allowed to intervene. All others who were parties to the original proceedings were also put on notice to elicit their views. Indiabulls Commercial Credit Private Limited and three more objectors came forward and filed their objections. Apart from IRP, RG Luxury Home Buyers Association filed objections on behalf of allottees (Home Buyers) seeking refund. All concerned were directed to file brief notes including the chart in regard to steps envisaged to be taken in furtherance of the judgment as also indicate the steps proposed to make the settlement incorporated in the aforesaid

judgment workable. Meanwhile, it was brought to our notice that Shri Gaurav Katiyar, IRP has tendered resignation. Keeping in view the last para of directions incorporated in judgment dated 5th February, 2020, learned Counsel for IRP was given liberty to approach the Adjudicating Authority for seeking substitution of the IRP as the CIRP was still underway. Further development, as noticed in order dated 22nd September, 2020 is in regard to one of the Financial Creditors desiring to invest some amount for completion of the project in furtherance of judgment dated 5th February, 2020. IIFL Home Finance Limited – Financial Creditor filed affidavit in this regard.

6. Applicant-Rajesh Goyal (Promoter) seeks extension of 11 months after the expiry of timelines stipulated in judgment dated 5th February, 2020 in light of altered circumstances, which are attributed mainly to outbreak of COVID-19 and its repercussions.

7. IRP, in its brief note suggested that the Applicant may be given five-six months to complete and handover Towers-A, B, C & F to the respective allottees, while for the remaining Towers, the Applicant's may be deferred till he proves his bonafide in delivering Towers-A, B, C & F within the extended timelines. It was suggested that the Applicant be directed to expedite selling of Flats and bring money from properties of sister concerns. It was further suggested that the allottees and their bankers be directed to pay 90% of the total consideration calculated as per BBA as regards receivables from allottees of Greater Noida Project and the additional area. As regards receivables from projects situated in Delhi, it suggested that Shri Rajesh Goyal be directed to provide and utilize money in addition to Rs.5.06 crores

already invested by him for construction purpose. It was suggested that IIFL Home Finance Limited may be directed to release the fund immediately. It was further suggested that M/s AGS Developers Private Limited, M/s GBS Marketing Private Limited and M/s Neel Builders Private Limited may be directed to release the funds immediately as per their LOI's. It was lastly suggested that Indiabulls may be directed to amicably settle the dispute and surrender 70% of the sale proceeds of the said property in favour of general balances of the creditors to be utilized for completion of the real estate project.

8. Indiabulls Commercial Credit Private Limited has filed affidavit stating therein that IIFL Home Finance Limited was obligated to disburse an amount of Rs.15 crores in favour of the Corporate Debtor in three tranches of Rs.5 crores each, disbursement of first tranche within 30 days from the date of judgment and further disbursement within sixty days and ninety days thereof respectively. It is stated that IIFL failed to disburse such aforesaid amount thereby not complying with judgment. However, it is admitted that sanction of Rs.15 crore in favour of Corporate Debtor was approved by IIFL vide its letter dated 4th August, 2020.

9. IIFL Home Finance Limited (Financial Creditor/ Intervenor) has filed affidavit stating that the Appellant sought further financial assistance of Rs.15 crores from it and IIFL had agreed to extend further loan to it in terms of letter dated 4th August, 2020. The sanction was confirmed vide letter dated 21st August, 2020 subject to this Appellate Tribunal granting extension of

time to complete the Project. Thus, IIFL Home Finance Limited has raised no objection to extension of timelines specified in the judgment.

10. Intervenor-RG Luxury Home Buyers Association has filed reply to the affidavit of IIFL Home Finance Limited stating that out of Rs.15 crores loan sanctioned by IIFL, Rs.10 crores will be adjusted by it towards repayment of principal amount of the previous loan. In the end the extension of loan of Rs.15 crores would prove to be a damp squib as Rs.14 crores will have to be repaid with interest thereupon practically leaving nothing for completion of the Project.

11. RG Jan Kalyan Samiti – An Association of Home Buyers, as Intervenor has filed affidavit stating that the unprecedented situation due to outbreak of COVID-19 has impacted the completion of Project, shattering their dreams of owning a dream home to be complete at the earliest. However, they have not opposed the prayer of extension of timelines to Rajesh Goyal.

12. The Home Buyers seeking refund have filed affidavit stating that to make the settlement workable the Applicant promoter must invest Rs.70 crore in the Bank account within a period of 30 days and the extension should be considered thereafter. It is stated that under the garb of extension of time the Applicant wants the allottees to cough up Rs.92.65 crores to be paid by the allottees seeking possession of the flats. It is further stated that the IRP should lay down the procedure to be followed by the objectors to start process of surrendering of their allotted flats.

13. Indiabulls Commercial Credit Private Limited, in its brief note (filed vide Diary No.22398 dt. 29.9.2020) indicated that the Applicant failed to comply

with the directions as contained in judgment dated 5th of February, 2020.

This has been projected in a tabular form, which is reproduced hereinbelow: -

"Sno.	Particulars	Timeline as per order dated 5.2.2020	Complied/ Not Complied
1.	Rs.13.88 Crs, to be invested in the Corporate Debtor	within 30 days i.e. by 5.3.2020	Not Complied
2.	Rs.25.94 Crs, to be invested in the Corporate Debtor	within 60 days by 5.4.2020	Not Complied
3.	Rs.30.15 Crs, to be invested in the Corporate Debtor	within 90 days by 5.5.2020	Not Complied
4.	Construction of flats/ apartments to be completed	By 30.6.2020	Not Complied
5.	All internal fit outs for electricity water connection to be completed	By 30.7.2020	Not Complied
6.	Common area such as swimming pool, club house etc. as per agreement be completed	By 30.8.2020	Not Complied
7.	Return of 30% of principal amount to the allottee who seek refund (after surrendering flats)	Within 90 days	Not Complied
8.	Return of remaining 70% of principal amount to the allottee who seek refund (after surrendering flats)	From 91 to 180 days from the start of work	Not complied
9.	Interest to be paid on the principal amount to the allottee who seek refund (after surrendering flats)	By 30.8.2020	Not complied
10.	Repayment of the dues of ICCL	within 180 days from the start of the construction work at the site of project i.e. by 5.9.2020	Not complied"

14. We have heard learned Counsel for the parties and perused the record.

15. According to Applicant, when the judgment was delivered on 5th of February, 2020, the timelines given therein were achievable. However, with the present pandemic situation it is impossible to work with a larger manpower with restrictions and mandatory guidelines in place to be followed for safety of workers. The Applicant seeks exclusion of the period from the date of judgment till further directions as a zero period and to extend the timelines, for completion of the Project in a proportionate manner with reasonable extension on account of restrictions imposed. While IIFL Home Finance Limited has sanctioned further loan of Rs.15 crores to the present Project, all other allottees seem to be interested in completion of the Project, which would serve the larger interests of the stake holders. The Applicant seeks 90 days extension beyond the period of exclusion. However, in regard to allottees who were directed to deposit the balance amount and pay 90% by 15th March, 2020 the Applicant wants the time to be extended upto 15th November, 2020. As regards, direction to Applicant to infuse a sum of Rs.5.88 crores within a week, it is submitted that the Applicant has already infused Rs.5.24 crores and he undertakes to infuse balance within two weeks.

16. The Applicant has given proposed/ revised extended timeline (filed vide Diary No.24606 dt. 12.1.2021), which is extracted herein below: -

“Sl. No.	Event	Original Timelines as per order dated 05.02.2020	Revised timelines (exclusion upto 15.01.2021)	Proposed extended timelines (90 days)
1	Flat should be completed in all aspects (Page 62 paragraph 20(ii))	30.06.2020	15.06.2021	15.09.2021
2	All internal fit-outs for electricity, water connection (Page 62 paragraph 20 (ii))	30.07.2020	15.07.2021	15.10.2021
3	Common area such as Swimming Pool, Club house etc. as per agreement (Page 62 paragraph 20 (iii))	30.08.2020	15.08.2021	15.11.2021
4	Refund of 30% of the Principal amount to the Allottees (Page 62, paragraph 20 (iv))	22.05.2020	15.04.2021	15.07.2021
5	Refund of 70% of the Principal amount to the allottees (Page 62, paragraph 20 (iv))	30.08.2020	15.08.2021	15.11.2021
6	Interest to be paid to the allottees seeking refund (Page 62, paragraph 20 (iv))	30.08.2020	15.08.2021	15.11.2021
7	Payment to Financial Institutions/ Bank and operational Creditors (Page 62, paragraph 20 (iv))	30.08.2020	15.08.2021	15.11.2021

As per the said order, the allottees were directed to deposit balance amount and pay 90% by 15.03.2020, the same may be extended to 15.03.2021.”

17. After providing opportunity of hearing to the stake holders, who appeared or were represented and having accorded our anxious consideration

to the submissions at the Bar, we are of the view that the outbreak of COVID-19 declared as pandemic globally and resulting in imposition of nationwide lockdown with effect from 25th March, 2020 and having the disastrous effects of disrupting all economic activities with probably the worst adverse impact on Infrastructure Projects/ Real Estate Projects compounded by migration of labour, restrictions in place for the safety of human lives besides economic hardship unleashed by the unforeseen circumstances, impact whereof still subsists, it would be in the interest of all stake holders to mitigate the hardship created by the unprecedented situation in the wake of outbreak of COVID-19 resulting in imposition of lockdown and halting/ slowing down economic activities/ construction activities. It is indisputable that cash flow and liquidity has suffered a setback and the credit market is making desperate effort to bounce back and stand back on its feet. This warrants a magnanimous approach as the Reverse Corporate Insolvency Resolution Process, showing encouraging results and safeguarding the interests of all stake holders must be given one more chance of proving result oriented. With this noble object, which has in essence been subscribed to by the stake holders interested in completion of the Project, we are inclined to extend the timelines envisaged in the judgment dated 5th of February, 2020 without altering, substituting or modifying its structural terms. This, we believe, will create a win-win situation for all stake holders, though extension of time would result in further delay of delivery of flats to the Home Buyers awaiting to step in into their dream homes. We make it clear that though we are convinced about delay having been occasioned on the part of Promoter in

adhering to the directions, as regards, infusion of Rs.13.88 crores in Corporate Debtor within 30 days from the date of judgment viz. by 5th of March, 2020, we stop short of holding that the Reverse Corporate Insolvency Resolution Process contemplated in terms of the judgment dated 5th of February, 2020 has aborted due to non-compliance on this score, the single instance of default on the eve of outbreak of COVID-19 pandemic and imposition of lockdown being viewed only as an aberration. This is not with a view to condone the default but only to promote the ends of justice as giving further lease of life to the visionary step taken in pursuance of an experiment in the form of Reverse Corporate Insolvency Resolution Process must not give way to a single instance of default which happened just on the eve of imposition of lockdown due to outbreak of COVID-19 pandemic.

18. We accordingly, while allowing the Application seeking extension in the context of timelines provided in the judgment to the extent indicated, direct extension of timelines as indicated in the proposed extended timelines filed on behalf of the Applicant vide Diary No.24606 dated 12th of January, 2021 (also reproduced at paragraph 16 above of this judgment), with further provision that the time allowed to allottees who were directed to deposit balance amount and pay 90% by 15th March, 2020 shall stand extended to 15th of June, 2021. All directions, except for the extended timelines, remaining intact, it is reiterated that if the Applicant-Promoter fails to comply with the undertaking and fails to invest as Financial Creditor or does not cooperate with the Resolution Professional, the amount invested by him as

Financial Creditor in terms of the judgment shall stand forfeited and the Adjudicating Authority, National Company Law Tribunal will complete the Insolvency Resolution Process. The Resolution Professional will report compliance in respect of each step contemplated to be taken in terms of the fresh schedule within 15 days on first working day of every month. It shall be open to the homebuyers to approach this Appellate Tribunal with any grievance in this regard.

The I.A. No.2166 of 2020 is disposed off.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Justice Jarat Kumar Jain]
Member (Judicial)**

**[Dr. Alok Srivastava]
Member (Technical)**

New Delhi

4th March, 2021

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